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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/533,228

04/28/2005

Frank Hundscheidt

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10/26/2009

ERICSSON INC.
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EXAMINER

AFOLABI, MARK O

ART UNIT

PAPER NUMBER

2454

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/533,228</p>	<p>Applicant(s) HUNDSCHIEDT ET AL.</p>	
	<p>Examiner MARK O. AFOLABI</p>	<p>Art Unit 2454</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Nathan J. Flynn/
Supervisory Patent Examiner, Art Unit 2454

/MARK O. AFOLABI/
Examiner, Art Unit 2454

Continuation of 11. does NOT place the application in condition for allowance because: The examiner maintains the rejections of claims 1-23 and maintains that the combination of applied art meets the claimed limitations (See MPEP 2111). In this case, the combined applied art Navin Chaddha (2003/0061368) (Chaddha hereafter) and Siamak Naghian (2004/0102195) (Naghian hereafter) meet the limitations, to address these limitations, few areas in the limitations as regards to applicant's argument will be recited below for clarity.

Applicant argued specifically, "generating an aggregated feedback report on the clients' reception conditions of the data stream considering the distribution characteristics, sending the aggregated feedback report to the server, and adapting the transmission of the data stream from the server to the clients according to the aggregated feedback report "

In response to applicant's argument that the reference fail to teach "generating an aggregated feedback report on the clients' reception conditions of the data stream considering the distribution characteristics [e.g., achievable measurement accuracy, [0093], Naghian],

Examiner will like to point out that per the claims language, two things are involve here, the server and the clients...So, having said that, let us first look at the definition of the term "aggregate" , which has multiple definitions, including "to combine" , "form a collection" , "a sum"and "mass". Therefore, if the aggregation of feedback is at the clients, Chaddha teaches, "server 210 adaptively right-sizes the multimedia data stream in response to the feedback from client computers 231, 232, . . . 239 (step 930). Right-sizing is the process of pruning and/or growing the multimedia data stream to better match the usage of the streams with the needs of client computers 231, 232, . . . 239. There are two related components to right sizing the multimedia stream. First, the higher base layer corresponding to the lowest bandwidth related by client computers 231, 232, . . . 239 is selected. Next, unused enhancement layers are pruned, i.e., not transmitted to client computers 231, 232, . . . 239, [0064-0067] .

However, if applicant's argument is based on the aggregated feedback on the server, Chaddha also teaches having an encoder (i.e., server) that, "encoder 510 of FIG. 5A provides a single predetermined base layer BL1 and an associated range of enhancement layers EL(2-1), EL(3-1), EL(4-1), the ability of encoder 510 to adapt to the actual needs of client computer 231, 232, . 239 is limited to growing and pruning enhancement layers EL(2-1), EL(3-1), EL(4-1)", [0059]. Since, there are only two variable (server and clients) and the examiner cannot definitely say how and what is doing the aggregation of feedback, the examiner has broadly interpreted the claims language (see MPEP 211). The Examiner has full latitude to interpret each claim in the broadest reasonable sense. The Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning. It is also pertinent to know, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). , Applicants need to understand that in the field of Networking, each multimedia network has different structures, different properties, and different characteristics, examiner needs to adhere to the claim language when interpreting the claims.

sending the aggregated feedback report to the server (e.g., Client computer 231 also provides feedback on the use of and/or need for the multimedia to server 210, [0067, 0011] and abstract); and

adapting the transmission of the data stream from the server to the clients according to the aggregated feedback report (e.g., Feedback enables the server to dynamically adapt the multimedia data to optimally utilize the network bandwidth and to match the needs of the client computers, abstract and [0065 and 0068], Chaddha). Hence, rejections of claims 1-23 still stand.

Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In *re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969)".

Examiner's Note: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.